

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

YAZOO COUNTY, MISSISSIPPI

v.

Criminal No. 3:22-cr-113-DCB-LGI

GEORGE PREWITT, JR.

DEFENDANT

ORDER

BEFORE THE COURT is George Prewitt, Jr.'s ("Defendant") Motion for Stay of the Remand Order ("Motion"). [ECF No. 8]. Having read the Motion, the applicable statutory and case law, and being otherwise fully informed in the premises, the Court finds as follows:

On October 19, 2022, Defendant removed this speeding ticket action from a state court in Yazoo County, Mississippi to this Court. [ECF No. 1]. On December 22, 2022, Defendant requested that the Court convene a three-judge panel comprised of two district court judges and one circuit court judge. [ECF No. 2]. The Court denied that request, noted the case's removal defects and the Court's lack of jurisdiction over the action, and remanded the case to state court. [ECF No. 3]. On February 13, 2023, Defendant filed a notice of appeal. [ECF No. 4]. On July 28, 2023, Defendant requested that the Court stay its remand pending appeal. [ECF No. 8].

While Rule 62 permits courts to stay actions pending appeal, this rule is inapplicable in the instant case where the issue before the Court was that of proper removal. See City of New Orleans v. National Service Cleaning Corp., No.96-1601, 1997 WL 5915 *1 (E.D.La. January 6, 1997). The Court notes that a remand order based on either a defect in the removal procedure or lack of subject matter jurisdiction is not reviewable on appeal or otherwise.¹ See 28 U.S.C. § 1447; Tillman v. CSX Transp., Inc., 929 F.2d 1023, 1026 (5th Cir.1991).

The Court is of the opinion that regardless of whether the Court's remand order is appealable, Defendant's request to stay remand is denied. Defendant has not made any showing of why a stay is necessary in this case. Defendant has not alleged that any harm or prejudice that will result in absence of a stay. See McDermott International, Inc. v. Underwriters at Lloyd's London, Nos. 91-0841, 91-0871, 1991 WL 121216 *1 (E.D.La. June 21, 1991) (citing In Re First South Savings Ass'n, 820 F.2d 700 (5th Cir.1987)).

Therefore, the Court is of the opinion that while the Defendant waits for the Fifth Circuit to rule on his appeal, the

¹ Although Defendant in part attempted removal pursuant to 28 U.S.C. § 1443, the Court noted at length in its earlier Order the defects of Defendant's removal of this case. [ECF No. 3] at 7-12.

case should proceed. Having detected no sufficient reason to stay this action, Defendant's Motion [ECF No. 8] is denied.

ACCORDINGLY,

IT IS HEREBY ORDERED that Defendant's Motion for Stay of the Remand Order [ECF No. 8] is DENIED.

SO ORDERED, this 1st day of August, 2023.

/s/ David Bramlette
DAVID C. BRAMLETTE
UNITED STATES DISTRICT JUDGE